



August 13, 1999

Ms. Katherine Mintor Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2311

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126436.

The Office of the Attorney General (the "OAG") received a written request for all documents related to a 1995-1996 OAG investigation of "Equinox International Corporation and/or Bill Gould, and/or Advanced Marketing Seminars, Inc." You represent that the requestor narrowed the scope of this request "to include only certain types of documents relating to the OAG investigation, including demand letters, Civil Investigative Demands ("CIDs") issued, and communications between the parties which might set out the position of the parties." You contend that portions of the requested information are excepted from disclosure by section 552.101 of the Government Code. You also relate that release of certain responsive information implicates the proprietary interests of third parties and that this information may be excepted from disclosure by section 552.110 of the Government Code. You have submitted a representative sample of the requested information to this office for review.¹ We have considered the exceptions you raise and reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, this office informed Equinox International, Inc., the firm whose interests are implicated, of the request, and provided this firm the opportunity to claim the exceptions to disclosure it may contend applies to the requested information, together with argument in support of those exceptions. *See Gov't*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions in certain circumstances). The notification stated that if the company did not respond within 14 days of receipt of the notice, this office will assume that the company has no privacy or property interest in the requested information. Equinox did not respond to this notice within the time limit. The OAG states that it does not have sufficient factual information to make the requisite determination. As neither the OAG or the third party has shown that section 552.110 applies to this information, we conclude that the information may not be withheld under this provision of the Government Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You contend that “CID’s, CID document responses and correspondence with respondents or their counsel about compliance with CID’s” are made confidential by section 17.61(f) of the Business and Commerce Code. You have supplied documents identified as Exhibits B, C, D, and E which you contend are subject to this statute.

Section 17.61 of the Business and Commerce Code authorizes the consumer protection division of the OAG to issue a “civil investigative demand” to any person believed by the division to be in possession of “the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter.” Bus.& Com. Code §17.61(a). The demand requires the person to “produce the documentary material and permit inspection and copying.” *Id.* Subparagraph (f) of that statute controls release of the material thus produced; in relevant part it reads:

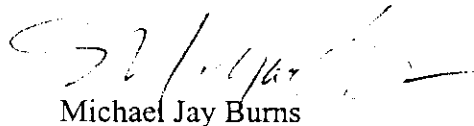
No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material.

Thus, the scope of the information protected by this statute encompasses the original materials produced by a party in response to a section 17.61 demand, copies of original materials made available by that party, and the content of the responsive materials. CID’s are not within the ambit of this statute. The content of correspondence from the OAG is made confidential by this statute only to the degree that it reveals information produced in response to a section 17.61 demand.

Exhibit B is the directive itself, it contains no confidential information. Exhibits C and D and portions of E, are correspondence; we have marked those portions of this material which would tend to reveal the content of documents submitted in response to a 17.61 demand. The marked information must be withheld. The material produced in response to a 17.61 demand must be withheld in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126436

Encl. Submitted documents

cc: Ms. Janet McFadden
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(w/o enclosures)